

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

Index No.:

DILSON PENA,

Date Purchased:

Plaintiff(s),

Date Filed:

– against –

SUMMONS**CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE OFFICER CARLOS
MARCHENA, POLICE OFFICER JOHN DOE, POLICE
OFFICER JOHN ROE,**Plaintiffs designate Bronx County as the
place of trial. The basis of venue is the
action arose in Bronx County.

Defendant(s).

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney within 20 days after the service of the summons, exclusive of the day of service or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the notice set forth below and in the within Verified Complaint.

Date: New York, New York
December 8, 2010**NEIL WOLLERSTEIN, ESQ.**Attorney for Plaintiff
59 Maiden Lane, 43rd Floor
New York, NY 10038
(212) 412-4705
File No.: NW- 181TO: MICHAEL A. CARDOZO, ESQ.
Corporation Counsel of City Of New York
100 Church Street
New York, NY 10007RECEIVED
10 DEC -8 PM 4:16

NEW YORK CITY POLICE DEPARTMENT

1 Police Plaza

New York, NY 10007

POLICE OFFICER CARLOS MARCHENA (Shield No. 29700)

New York City Police Department

Bronx Narcotic Division

1 Police Plaza

Room 1100

New York, NY 10007

POLICE OFFICER JOHN DOE

New York City Police Department

1 Police Plaza

New York, NY 10007

POLICE OFFICER JOHN ROE

New York City Police Department

1 Police Plaza

New York, NY 10007

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

DILSON PENA,

INDEX NO.

Plaintiff(s),

– against –

**CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE OFFICER CARLOS
MARCHENA, POLICE OFFICER JOHN DOE, POLICE
OFFICER JOHN ROE,**

VERIFIED COMPLAINT

Defendant(s).

Plaintiff, by his attorney, **NEIL WOLLERSTEIN, ESQ.**, complaining of the defendants,
respectfully shows to this Court and alleges the following upon information and belief:

**AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF
PLAINTIFF DILSON PENA**

1. That at all times the Plaintiff **DILSON PENA** was and is a resident of Bronx County,
State of New York.
2. That at all times hereinafter mentioned, the defendant, **CITY OF NEW YORK**,
hereinafter referred to as “CITY”, was and still is a municipal corporation organized and existing
under and by virtue of the laws of the State of New York.
3. That at all times hereinafter mentioned the defendant, **NEW YORK CITY POLICE
DEPARTMENT**, hereinafter referred to as “NYPD”, was and is an agency of the defendant, **CITY**.
4. That on and prior to 1/20/10 and at all times hereinafter mentioned the defendant,
POLICE OFFICER CARLOS MARCHENA (Shield No. 29700), hereinafter referred to as
“MARCHENA” was and is a police officer employed by the defendant NYPD, and at all times
herein was acting in such capacity as the agent, servant and employee of the **CITY** and **NYPD**.

5. That on and prior to 1/20/10 and at all times hereinafter mentioned the defendant, POLICE OFFICER JOHN DOE, hereinafter referred to as "DOE" was and is a police officer employed by the defendant NYPD, and at all times herein was acting in such capacity as the agent, servant and employee of the CITY and NYPD.

6. That on and prior to 1/20/10 and at all times hereinafter mentioned the defendant, POLICE OFFICER JOHN ROE, hereinafter referred to as "ROE" was and is a police officer employed by the defendant NYPD, and at all times herein was acting in such capacity as the agent, servant and employee of the CITY and NYPD.

7. That on or about 1/20/10, at approximately 4:55 p.m., the Plaintiff **DILSON PENA** while lawfully in the vicinity of Simpson Street and Westchester Avenue, County of Bronx, City and State of New York, was without just cause, probable cause or provocation, maliciously, intentionally and falsely accused by CITY, NYPD, MARCHENA, DOE and ROE of having committed the crime of Criminal Possession of a Controlled Substance in the Third Degree.

8. That on or about 1/20/10, at approximately 4:55 p.m., the Plaintiff **DILSON PENA** was without just cause, probable cause or provocation, and with reckless, negligent and callous disregard for the truth, and without investigation, placed under arrest by CITY, NYPD, MARCHENA, DOE and ROE, their agents, servants and/or employees, and in particular, by MARCHENA.

9. That on or about the 1/20/10, and upon arresting the Plaintiff **DILSON PENA** and depriving him of his liberty, CITY, NYPD, MARCHENA, DOE and ROE took the Plaintiff **DILSON PENA** to a police station in the County of Bronx and entered his on the records as under arrest on the above-mentioned charges.

10. That on or about 1/20/10, the CITY, NYPD, MARCHENA, DOE and ROE further

caused Plaintiff **DILSON PENA** to have his fingerprints and photographs to be taken in accordance with police procedures for the arrest of criminals and held him on the above charges at various police stations, correctional facilities and at the Courthouse located at 215 East 161st Street, County of New Bronx, City and State of New York.

11. That on or about 1/20/10 Plaintiff **DILSON PENA** was aware of his arrest and confinement.

12. That on or about 1/20/10 Plaintiff **DILSON PENA** did not consent to his arrest or confinement.

13. That on or about 1/20/10 Plaintiff **DILSON PENA'S** confinement, arrest and detention was without any legal justification.

14. That on or about 3/26/10, within ninety (90) days after the cause of action accrued herein, and more than thirty (30) days prior to the commencement of this action, the Plaintiff **DILSON PENA** caused the notice of claim, in writing, sworn to by and on behalf of the claimant, the Plaintiff **DILSON PENA** herein, containing the statement of the name and place of residence of the claimant by the street and number and his attorney, and describing the time when the particular claim and circumstances under which the damages and injuries were sustained, the cause thereof, and so far as practical, the nature and extent of the injuries to be personally served upon the defendant CITY, their agents, servants and/or employees at the Law Department, and this action was so commenced within one (1) year and ninety (90) days after said cause of action accrued his, and for more than thirty (30) days prior to the commencement of this action, defendant CITY neglected, refused and failed to make an adjustment of said claim, and said claim remains unadjusted and unpaid, although plaintiff herein has requested and demanded that the same be paid and adjusted.

15. That the defendants requested a hearing pursuant to General Municipal Law Section

50-H and that said hearing was stayed by stipulation on 11/11/10 under claim number 2010PI013393.

16. That the actions of CITY, NYPD, MARCHENA, DOE and ROE as described above were carried out in a reckless, willful, wanton and malicious manner.

17. That by reason of the foregoing, Plaintiff **DILSON PENA** has been damaged in an amount that exceeds the jurisdictional limits of all lower trial courts of this state.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF
PLAINTIFF DILSON PENA

18. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered 1 – 17 with the same force and effect as if fully set forth at length herein.

19. That on or about 1/20/10, a criminal complaint was issued by the CITY, NYPD, MARCHENA, DOE and ROE their agents, servants and/or employees, and in particular, by the CITY, NYPD, MARCHENA, DOE and ROE and a criminal action against the Plaintiff **DILSON PENA** was commenced.

20. That on or about 1/20/10 a criminal action against Plaintiff **DILSON PENA** was commenced without probable cause or justification.

21. That solely as a result of the aforesaid, the Plaintiff **DILSON PENA'S** life was interfered with.

22. That the criminal action against Plaintiff **DILSON PENA** was continued for an extended period of time by defendants with malice and bad faith.

23. That solely as a result of the false arrest, assault, battery, false imprisonment and malicious prosecution of the Plaintiff **DILSON PENA**, he was deprived of his liberty for an extended period of time and was subjected to scorn, ridicule, embarrassment and was degraded in the

esteem of the community both personally and professionally.

24. That on or about 3/23/10 by application of the District Attorney's Office the criminal matter was terminated in favor of the Plaintiff **DILSON PENA**.

25. That the actions of CITY, NYPD, MARCHENA, DOE and ROE as described above were carried out in a reckless, willful, wanton and malicious manner.

26. That by reason of the foregoing, Plaintiff **DILSON PENA** has been damaged in an amount that exceeds the jurisdictional limits of all lower trial courts of this state.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF
PLAINTIFF DILSON PENA

27. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered 1 – 26 with the same force and effect as if fully set forth at length herein.

28. That on or about 1/20/10, and while in the custody of the defendants in the County of Bronx, City of New York, the Plaintiff **DILSON PENA** was intentionally pushed, assaulted, violated, strip searched, humiliated and handcuffed by the CITY, NYPD, MARCHENA, DOE and ROE who were acting within the scope of their employment and authority in such a manner as to knowingly cause injury to plaintiff.

29. That on or about 1/20/10 CITY, NYPD, MARCHENA, DOE and ROE their agents, servants and employees, acting as agents and on behalf of the CITY, NYPD, MARCHENA, DOE and ROE within the scope of their employment, did intentionally, willfully and maliciously assault and batter the Plaintiff **DILSON PENA** in that they have the real or apparent ability to cause imminent harmful and/or offensive bodily contact and intentionally did a violent and/or menacing act which threatened such contact to the Plaintiff **DILSON PENA** and their act caused apprehension of such contact in the plaintiff, and in a hostile and/or offensive manner touched and beat the plaintiff and/or

offensive bodily contact to the Plaintiff **DILSON PENA** and caused such battery in and about his head, neck, back, body and limbs.

30. That by reason of the aforesaid intentional assault and battery committed by the defendants, their agents, servants and employees, in particular CITY, NYPD, MARCHENA, DOE and ROE acting within the scope of their employment and authority and without any probable or reasonable cause, Plaintiff **DILSON PENA** suffered great and permanent bodily injury in and about his head, neck, back, body and limbs and was rendered sick, sore, lame and disabled, and suffered conscious pain and suffering, and that he was otherwise damaged.

31. That as a result of the aforesaid assault and battery the Plaintiff **DILSON PENA** was caused to sustain serious, severe, painful and permanent bodily injuries so that he was rendered sick, sore, lame and disabled and so remains and was and will be compelled to seek medical aid and attention and incur expenses for same in an endeavor to cure himself of his said injuries and he was and will be prevented from attending his usual occupation and duties.

32. That the actions of CITY, NYPD, MARCHENA, DOE and ROE as described above were carried out in a reckless, willful, wanton and malicious manner.

33. That by reason of the foregoing, Plaintiff **DILSON PENA** has been damaged in an amount that exceeds the jurisdictional limits of all lower trial courts of this state.

**AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF
PLAINTIFF DILSON PENA**

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered 1 – 33 with the same force and effect as if fully set forth at length herein.

35. That at all times hereinafter mentioned the aforesaid false arrest, assault, battery, false imprisonment and malicious prosecution was caused solely as a result of the negligence of

CITY,NYPD, MARCHENA, DOE and ROE their agents, servants and/or employees.

36. That the actions of CITY, NYPD, MARCHENA, DOE and ROE as described above were carried out in a reckless, willful, wanton and malicious manner.

37. That by reason of the foregoing, Plaintiff **DILSON PENA** has been damaged in an amount that exceeds the jurisdictional limits of all lower trial courts of this state.

AS AND FOR A FIFTH CAUSE OF ACTION ON BEHALF OF
PLAINTIFF DILSON PENA

38. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered 1 -37 with the same force and effect as if fully set forth at length herein.

39. That the CITY,NYPD, MARCHENA, DOE and ROE, their agents, servants and employees failed to adequately and properly train, supervise, discipline or in any other way control the behavior or their personnel and in particular defendants CITY,NYPD, MARCHENA, DOE and ROE and in their hiring practices in the exercise of their functions in that they had a reckless lack of cautious regard for the rights of the pubic, including Plaintiff **DILSON PENA** and exhibited a lack of that degree of due care which prudent and reasonable individuals would show in executing the duties of the defendants.

40. That the failure of the CITY, NYPD, MARCHENA, DOE and ROE, their agents, servants and employees to adequately and properly train, supervise, discipline or in any other way control the behavior or their personnel in the exercise of their functions, was carried out willfully, wantonly, maliciously and with such reckless disregard for the consequences as to display a conscious disregard for the dangers of harm and injury to the pubic, including Plaintiff **DILSON PENA**.

41. Due to the acts of the CITY, NYPD, MARCHENA, DOE and ROE, their agents,

servants and employees herein, and their failure to discipline and properly hire their employees and the continued employment of said employees presents a clear and present danger to the citizens of the County of the Bronx, City of New York and State of New York.

42. That the Plaintiff **DILSON PENA** did not consent to the aforementioned conduct of the CITY, NYPD, MARCHENA, DOE and ROE, their agents, servants and employees or in any way contribute to the said conduct.

43. That the injuries sustained by the Plaintiff **DILSON PENA** resulted from the negligence of the CITY, NYPD, MARCHENA, DOE and ROE in employing and continuing to employ, without adequate training and supervision, employees of violent character, unsuitable temperament and insensitive disposition.

44. That the actions of CITY, NYPD, MARCHENA, DOE and ROE as described above were carried out in a reckless, willful, wanton and malicious manner.

45. That by reason of the foregoing, Plaintiff **DILSON PENA** has been damaged in an amount that exceeds the jurisdictional limits of all lower trial courts of this state.

WHEREFORE, the Plaintiff **DILSON PENA** demands judgment against the defendants on the First Cause of Action through the Fifth Cause of Action in a sum that exceeds the jurisdictional limits of all lower trial courts of this state for each cause of action all together with the costs and disbursements of this action.

Dated: New York, New York
December 8, 2010

Yours, etc.,

A handwritten signature in black ink, appearing to read 'Neil Wollerstein', written over a horizontal line.

NEIL WOLLERSTEIN, ESQ.

Attorney for Plaintiff

59 Maiden Lane, 43rd Floor

New York, NY 10038

TEL: (212) 412-4705


File No.: NW-181

ATTORNEY VERIFICATION

NEIL WOLLERSTEIN, an attorney duly admitted to practice before the courts of the State of New York affirms the following to be true pursuant to CPLR 2106 and under the penalties of perjury:

1. The undersigned, an attorney admitted to practice in the Courts of the State of New York states that he is retained on behalf of plaintiff **DILSON PENA** in the within action.
2. That affirmant has read the foregoing **SUMMONS and COMPLAINT** and knows the contents thereof; that the same are true to affirmant's own knowledge except as to the matters herein stated to be alleged on information and belief; and that as to those matters affirmant believes them to be true.
3. Your affirmant further says that the reason this verification is made by affirmant and not the plaintiff is that the plaintiff is not within the County of New York whose affirmant maintains his office.

Dated: New York, New York
December 8, 2010

A handwritten signature in black ink, appearing to read 'Neil Wollerstein', written over a horizontal line.

NEIL WOLLERSTEIN

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

DILSON PENA,

PLAINTIFF(s),

-AGAINST-

CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, POLICE OFFICER
CARLOS MARCHENA, POLICE OFFICER JOHN DOE AND POLICE OFFICER JOHN
ROE,

Defendant(s).

SUMMONS AND COMPLAINT

NEIL WOLLERSTEIN, ESQ.

Attorney for Plaintiff
59 Maiden Lane, 43rd Floor
New York, NY 10038
(212) 412-4705
File No.: NW-181